

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DYSON TECHNOLOGY LIMITED)

and DYSON, INC.,)

Plaintiffs,)

v.)

Civil Action No. 05-434 GMS

MAYTAG CORPORATION,)

Defendant.)

REDACTED FOR PUBLIC FILING

DEFENDANT HOOVER, INC.'S MEMORANDUM OF LAW IN OPPOSITION
TO PLAINTIFF'S MOTION *IN LIMINE* NO. 6 TO EXCLUDE EVIDENCE OF
MAYTAG'S REPEAT BIN EMPTYING TEST AND OPENING BRIEF IN SUPPORT THEREOF

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Defendant Counterclaim Plaintiff Hoover, Inc. ("Hoover")¹ respectfully submits this answering brief in opposition to the motion *in limine* by Plaintiff Counterclaim Defendants Dyson Technology Limited and Dyson, Inc. (collectively "Dyson") to exclude evidence of Hoover's repeat bin emptying test.

I. FACTUAL BACKGROUND

Dyson claims that Dyson-brand vacuum cleaners never lose suction ("no loss of suction" claim).

¹

II. ARGUMENT

“The Rules of Evidence embody a strong and undeniable preference for admitting any evidence which has the potential for assisting the trier of fact.” *Kannankeril v. Terminix Intern, Inc.*, 128 F.3d 802, 806 (3d Cir. 1997). “Rule 702, which governs the admissibility of expert testimony, has a liberal policy of admissibility.” *Id.*

Where a consumer can be expected to reasonably perceive that a defendant's advertising claim of superiority applies to the real world, the defendant must demonstrate a correlation between its laboratory tests and the real world. *See Church & Dwight Co., Inc. v. S.C. Johnson & Son, Inc.*, 873 F. Supp. 893, 905 (D.N.J. 1994) (citing *Johnson & Johnson-Merck Consumer Pharm. Co. v. Rhone-Poulenc Rorer Pharm. Inc.*, 19 F.3d 125, 127 (3d Cir. 1994)).

Where no recognized industry standard exists, novel methodologies may be employed by experts with sufficient expertise and experience if such novel methodologies are reliable. *See Kannankeril*, 128 F.3d at 806. "Admissibility decisions focus on the expert's methods and reasoning." *Kannankeril*, 128 F.3d at 806.

WHEREFORE, for the foregoing reasons, Defendant Counterclaim Plaintiff Hoover respectfully requests that this Court deny Dyson's Motion *in Limine* No. 6.

Dated: April 23, 2007

Respectfully submitted,

HOOVER, INC.

/s/ Francis DiGiovanni

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CERTIFICATE OF SERVICE

I, Francis DiGiovanni, hereby certify that on April 23, 2007, copies of the foregoing document were served on the following counsel of record in the manner indicated:

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